



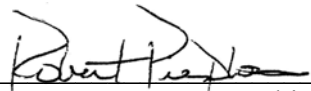
Construction Policy Bulletin

CPB 03-7 Civil Rights Act of 1964, Title 7 Equal Employment Opportunity Complaints and Reporting

References: Civil Rights Act of 1964 - *Title 7*
California Government Code 65040.12
California Public Resources Code 71110
Presidential Executive Orders 13166
Transportation Equity Act 21
Standard Specifications, Section 7-1.01A(4)
Standard Special Provisions, Section 14
Construction Manual, Section 8-207

Effective Date: November 3, 2003

Approved:


ROBERT PIEPLOW, Chief
Division of Construction

Approval Date: November 3, 2003

Background

Caltrans complies with nondiscrimination laws and regulations, including Title 7 of the Civil Rights Act of 1964.

Title 7 of the Civil Rights Act of 1964 states, "It shall be an unlawful employment practice for an employer: (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." Caltrans ensures that its activities or programs are nondiscriminatory.

District construction personnel conduct interviews with employees of the contractor and subcontractors. The interviews are conducted to verify that the contractors and subcontractors comply with the equal employment opportunity (EEO) and the labor nondiscrimination contract provisions as mandated by state and federal statutes and regulations. EEO complaints are referred to the Division of Construction by the labor compliance officer.

The Division of Construction requests Civil Rights initiate, track status, monitor progress, and provide final investigation reports to the district labor compliance officer for each EEO complaint.

Existing Procedure

Existing Procedures are outlined in the Section 8-207, "Employee Complaints – Discrimination Complaint Processing," of the *Construction Manual*.

New Procedure

Employee interviews for labor compliance and EEO should be conducted at the rate of at least two per month per contract, until all the contractor's employees have been interviewed at least once during the life of a contract. Interviews should be recorded on Form CEM 2504, "Employee Interview: Labor Compliance / EEO."

Any complaint that implicates the contractor's employment practice is generally a Title 7 EEO complaint. Equal employment opportunity (EEO) complaints may originate from contractor's employees because of either a direct complaint or as a result of a contractor employee interview. All EEO complaints are documented in a diary, letter to the project files, or on Form CEM 2504, "Employee Interview: Labor Compliance / EEO." These complaints may be presented by the public, contractors, suppliers, vendors, or employees. Complaints regarding EEO are directed to the resident engineer. The original complaint is filed in the project records. A copy of the complaint is directed to the district labor compliance officer.

The labor compliance officer sends the complainant a letter notifying them of their rights under the Civil Rights Act of 1964. The letter also provides a complete list of resolution options. Resolution options include:

- Use of the employer's internal EEO program for investigation and resolution.
- Filing a complaint directly with the California Department of Fair Employment and Housing (DFEH).
- Filing a complaint directly with the United States Equal Employment Opportunity Commission (EEOC).

A copy of the following brochures should be included in the letter to the complainant:

- DFEH brochure, "A guide for Complainants." The document is available via the internet at: <http://www.dfeh.ca.gov>
- EEOC brochure, "Filing a Charge." The document is available via the internet at: <http://www.eeoc.gov>

In addition, the district labor compliance officer will prepare and send a notification letter to the prime contractor that an employee has alleged discrimination and that the employee was given notice of their proper recourse. The employee's name shall not be divulged. It should include a reminder to the contractor of their contractual obligations to conduct an investigation. This letter should also advise the contractor that this issue was forwarded to the Caltrans Division of Construction and Civil Rights offices for initiation of a contract compliance oversight investigation.

The district labor compliance officer refers the issue to the Division of Construction. Copies of the letter sent to the complainant, contractor notification letter, and the employee interview form accompany the Division of Construction notification.

The Division of Construction ensures that a proper investigation is conducted. If Caltrans is the respondent for a Title 7 EEO complaint, the Caltrans office of Equal Employment Opportunity, Discrimination Complaint Investigations Unit conducts the investigation of the complaint. If the contractor is the respondent for a Title 7 EEO complaint, the contractor is required to conduct an investigation in accordance with Section 7-1.01A(4) of the *Standard Specifications*. Additional investigation requirements are included in all federal-aid contracts, under Section 14 of the standard special provisions.

Caltrans has no statutory or regulatory authority to conduct investigations of Title 7 complaints between contractors and their employees. Caltrans has no authority to gather evidence, subpoena documents, depose witnesses, or file EEO cases on the behalf of an employee of a contractor. Caltrans ensures that the contractor conducts an EEO investigation to provide contract compliance oversight of the contractor's EEO investigation, and to document oversight activities in the project records.

Civil Rights reports Title 7 complaints and contract data annually to the Federal Highway Administration. The Division of Construction submits contract data, complaint statistics, complaint analysis, and reports of corrective measures to Civil Rights for inclusion in the annual report. The Division of Construction collects contract data including number of active contracts, payments, percent complete, progress schedule, and contract changes orders. If there is a significant increase in the number of complaints, the Division of Construction conducts field investigations and concurrent process reviews to determine appropriate corrective action. The absence of complaints is sufficient to demonstrate nondiscrimination.

Attachments:

Sample Letter to Contractor

Sample Letter to Complainant

DEPARTMENT OF TRANSPORTATION

DIVISION OF CONSTRUCTION

1120 N STREET

P. O. BOX 942873

SACRAMENTO, CA 94273-0001

PHONE (916) XXX-XXXX

FAX (916) 654-6345

TTY (916) 654-4086

*Flex your power!
Be energy efficient!*

Date

Address

Dear (Employee Name):

This letter confirms our discussion on (date) informing us that you believe you have experienced discrimination and allege (company name) discriminated against you based on (race, color, national origin, sex, age, disability).

The district labor compliance officer reviewed the charges and notified (company name) in writing, that you have been provided a complete list of resolution options, including the use of the employer's internal equal employment opportunity program for investigation and resolution.

The California Department of Transportation (Department) monitors discrimination complaints against sub-recipients of state/federal financial assistance. However, Caltrans has no statutory or regulatory authority to conduct investigations of alleged discrimination complaints between the contractor and a contractor's employee. The Department has no authority to gather evidence, subpoena documents, depose witnesses, or file equal employment opportunity cases on the behalf of a contractor's employee. The Department ensures that the contractor conducts an equal employment opportunity investigation, provides contract compliance oversight of the contractor's equal employment opportunity investigation, and documents oversight activities in the project records.

You are advised that filing a complaint with the California Department of Fair Employment and Housing, or the United States Equal Employment Opportunity Commission must be filed within specific statutory deadlines from the date of the alleged discriminatory act.

If you have any questions, relating to the information referenced above, please contact (labor compliance officer name), at (labor compliance officer telephone #).

Sincerely,

(SIGNATURE)

District labor compliance officer

District (#) Construction

c: Division of Construction

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Date

Address

Dear (Company Name):

The California Department of Transportation (Department) has been notified that a current or former employee of (company name) (filed) (plans to file) a formal complaint of discrimination. The current or former employee is alleging discrimination based on (race, color, national origin, sex, age, disability).

The district labor compliance officer reviewed the charges and provided the complainant a complete list of resolution options, including the use of the employer's internal equal employment opportunity program for investigation and resolution.

The Department complies with nondiscrimination laws and regulations, including Title 7 of the Civil Rights Act of 1964. Title 7 of the Civil Rights Act of 1964 states, "It shall be an unlawful employment practice for an employer: (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." The Department ensures that its activities or programs are nondiscriminatory.

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the nondiscrimination statutes. Any individual alleging such harassment, retaliation, or intimidation may file a complaint with the California Department of Fair Employment and Housing, United States Equal Employment Opportunity Commission.

If you have any questions about your responsibilities relating to the information referenced above, please contact the Department Civil Rights office at (916) 227-2207.

Sincerely,

(SIGNATURE)

District labor compliance officer

District (#) Construction

c: Division of Construction